United Nations A/HRC/37/NGO/101

General Assembly

Distr.: General
8 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by the BADIL Resource Center for Palestinian Residency and Refugee Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-01948(E)
1801948

Please recycle

Extension of Israeli Sovereignty in oPt Amounts to Annexation

Introduction

1. Israel has been carrying out policies of annexation throughout the occupied Palestinian territory (oPt) since the beginning of the 1967 occupation. One of the main annexation policies cementing illegal Israeli sovereignty is the extension of Israeli domestic legislation to the oPt. In recent years, attempts at applying Israeli laws directly in occupied territory have intensified and recent Israeli plans and bills point to an overall governmental policy aiming at the annexation of Israeli colonies in the short term, and larger parts of the West Bank eventually.

Legal Framework

2. International Humanitarian Law (IHL) clearly establishes that the Occupying Power does not acquire sovereignty over the territory, that the occupation is a temporary situation, and that the occupier must respect the laws in force in the occupied territory,1 unless they constitute a threat to its security or an obstacle to the application of international law.2 These rules prohibit Israel from assuming sovereignty over the oPt and annexing parts of it into its own state. Combined, these acts directly challenge fundamental Palestinian rights, most importantly the right to self-determination.3 The denial of self-determination amounts to a serious breach of an obligation arising under a peremptory norm of international law.4

3. The acquisition of territory by force, also referred to as annexation, is another serious breach of international law.5 While annexation is not a legal category and there exists no set of definitive elements, "annexation presupposes the effective occupation of the territory in question and the clear intention to appropriate it permanently."6

Extension of Israeli domestic legislation to the oPt

4. Following the 1967 occupation, Israel immediately initiated measures to cement its control over Palestinian territory. One of the first actions was to de facto annex East Jerusalem, by applying Israeli laws directly to this part of the occupied territory.7 In 1980, the Israeli Parliament, Knesset, formalized East Jerusalem's annexation under Israeli law in violation of international law.

---

1 *The Hague Regulations concerning the Laws and Customs of War on Land*, 18 October 1907, art. 43, https://ihl-databases.icrc.org/ihl/WebART/195-200053?OpenDocument [hereinafter *Hague Regulations*]; *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, art. 64, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6DB876FD94A28530C12563CD0051BEF8 [hereinafter *IV GC*]

2 International Committee of the Red Cross, *Occupation and international humanitarian law: questions and answers*, 4 August 2004, https://www.icrc.org/eng/resources/documents/misc/634kfc.htm; Salwa Duaibis, "Responsibility and accountability of the occupying Power under international law", *United Nations International Meeting on the Question Of Palestine*, April 2013, 2, http://www.un.org/depts/dpa/qpal/docs/2013Addis/P1-%20Salwa*%20Duaibis%20E.pdf

3 See, UNGA Resolution A/RES/3070 (XXVIII), 30 November 1973, operative para. 2.

4 International Court of Justice, Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2014, http://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf

5Charter of the United Nations, 24 October 1945, 2(4), http://www.refworld.org/docid/3ae6b3930.html; Eyal Benvenisti, *The International Law of Occupation* (Princeton University Press, 1993), 5-6.

6 Rainer Hofmann, "Annexation," *Max Planck Encyclopedia of Public International Law*, February 2013, para. 1.

7 UN Security Council Resolution 478 (1980) [Territories occupied by Israel], 20 August 1980, S/RES/478 (1980), http://www.refworld.org/docid/3b00f1728c.html [hereinafter UNSC Res 478].

5. In the rest of the West Bank Israel has imposed a two-tier legal system whereby Israeli civil laws are extraterritorially applied to Jewish-Israeli colonizers (settlers), while Palestinians are subjected to military rule. Application of Israeli laws to colonizers in the oPt, ensures they are on legal par with those residing inside Israel.8 This constitutes an illegal expansion of Israeli jurisdiction into the occupied territory, unjustified by permissible exemptions within international law. The two-tier system imposes a clear discriminatory regime favoring colonizers and is a constant denial of the right to self-determination of Palestinians.9

6. Moreover, the two-tier legal system, allows for differentiated treatment that is solely based on nationality and religion, violating the fundamental prohibition on racial discrimination.10 This institutional and systematic discrimination also amounts to the crime of apartheid.11

7. Israeli civil law is applied to colonizers after being enacted by the Military Commander of the West Bank. The land on which the colonies are established is ruled by the laws in place in the oPt, in accordance to IHL. The 'Norms Law', approved by the Ministerial Committee for Legislative Affairs in November 2014,12 and re-tabled in June 2015,13 aims to change this situation. The 'Norms Law' gives the Military Commander the chance to issue recommendations for changes in formulation under special circumstances, but the Knesset would have the power to reject these changes and enforce the extra-territorial application of the laws.14 Although the Bill has not been approved yet, it is being discussed in the Knesset. If passed, it will make all Knesset laws directly applicable in Israeli colonies, making the Knesset the sovereign entity there.15

8. On 6 February 2017, the Israeli Knesset passed the 'Regularization Law' that legalized around 4,000 housing units in 53 colonial outposts built on private Palestinian land on the oPt.16 The Israeli Government Minister claimed the Bill is "[t]he first step towards complete regulation, namely, applying Israeli sovereignty over Judea and Samaria."17 This law retroactively legalizes any colonial outposts built on private Palestinian land under Israeli law, effectively allowing the illegal expropriation of private Palestinian lands, in contravention of international law.18 Moreover, this Bill is directly applicable to the outposts in the oPt as it circumvents the

---

8 Association for Civil Rights in Israel, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank*, October 2014, https://www.acri.org.il/en/wp-content/uploads/2015/02/Two-Systems-of-Law-English-FINAL.pdf

9 United Nations Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk*, Resolution A/HRC/16/72, 10 January 2011, para. 32(b), https://unispal.un.org/DPA/DPR/unispal.nsf/0/A72012A31C1116EC8525782C00547DD4

10 UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

11 Economic and Social Commission for Western Asia (ESCWA), "Israeli Practices toward the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation, Issue No.1", 2017, 44-45, available at: http://www.badil.org/phocadownload/Non-Badil_Research_and_Reports/Reports/un_apartheid_report_15_march_english_final.pdf

12 Gilead Sher, "The Application of Israeli Law to the West Bank: De Facto Annexation?", *INSS Insight No. 638*, 4 December 2014, http://www.inss.org.il/publication/the-application-of-israeli-law-to-the-west-bank-de-facto-annexation/ [hereinafter Sher, "Application of Israeli Law"]

13 Diakonia, *Rule of Law: A Hardening of Illegality in Israel and the oPt 2014-2017*, December 2017, 24, https://www.diakonia.se/globalassets/blocks-ihl-site/ihl-file-list/ihl--reports/rule-of-law-a-hardening-of-illegality-in-israel-and-the-opt-2014-2017.pdf [hereinafter Diakonia, *Rule of Law*].

14 Sher, "Application of Israeli Law", *supra note* 12

15 Diakonia, *Rule of Law*, 24, *supra note 13*

16 Peace Now, *Legalization Law Will Stain Israel's Law Books*, 29 January 2017, http://peacenow.org.il/en/legalization_law

17 Andrew Carey and Emanuella Grinberg, "Israel's parliament passes West Bank outposts bill", *CNN*, 7 February 2017, http://edition.cnn.com/2017/02/06/middleeast/israel-knesset-west-bank-outposts-bill/

18 *Hague Regulations*, art. 46, *supra note* 1; IVGC, art. 53, *supra note* 1

Military Commander, and alters the land legislation establishing a different legal status for the colonies, which is strictly prohibited under IHL.

9. Israel is also currently considering to pass into law the Ma'ale Adumim colonial bloc annexation plan, which would give Israel sovereignty over 6,000 hectares of Palestinian land.19 Israeli Prime Minister Netanyahu has recently backed the "Greater Jerusalem Bill" that would annex a total of 19 colonies in the West Bank and place them under the municipal boundaries of Jerusalem.20

Ruling Party in Israel Calls for Annexation

10. On 31 December 2017, the ruling party in Israel, Likud, called for the annexation of Israeli colonies.21 Yuli Edelstein, Speaker of the Knesset said, "A year ago we signed a bill proposal to apply Israeli sovereignty to Ma'ale Adumim in order to create territorial contiguity between it and Jerusalem. There are those who seek to divide Jerusalem; we intend to expand it."22 Labor and Welfare Minister Haim Katz stated, "Judea and Samaria [West Bank] and Greater Jerusalem... are an inseparable part of the land of Israel and will remain so forever."

Conclusions

11. Israel's implementation of parallel legal systems serves to blur any distinction between its territory and that of the West Bank. Recent attempts to expand the applicability of Israeli laws, not only to colonizers but to the land as well, entrenches Israeli sovereignty in occupied territory. The effect is to place colonies and their occupants inside 'bubbles' of de facto Israeli sovereignty and connecting them to the state of Israel.

12. These legislative practices that extend Israeli sovereignty into the occupied territory coupled with Israel's colony expansion result in incremental annexation and challenge the inalienable right of the Palestinian people to self-determination.

Recommendations

13. BADIL is deeply concerned about the continuous failure of the international community to fulfill its obligations under IHL and calls upon third states, UN bodies and agencies, and regional bodies to take concrete measures to pressure Israel to cease its annexation and colonization policies.
14. BADIL also calls upon third states, UN bodies and agencies, and regional bodies to refrain from recognizing as legitimate or assisting in the sustainment of Israeli extension of sovereignty over the oPt.

---

19 UNSC Res 478, *supra note* 7.

20 Peter Beaumont, "Netanyahu backs annexation of 19 West Bank settlements", *The Guardian*, 3 October 2017, https://www.theguardian.com/world/2017/oct/03/netanyahu-backs-annexation-of-west-bank-settlements

21 Reuters, Moran Azulay and Elior Levy, "Likud party calls for de-facto annexation of Israeli settlements", Ynet News, 1 January 2018, https://www.ynetnews.com/articles/0,7340,L-5064594,00.html

22 *Ibid.*